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09/746,872	12/22/2000	David John Tyrrell	16,498	9386

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KIMBERLY-CLARK WORLDWIDE, INC.
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EXAMINER

WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 19

Application Number: 09/746,872
Filing Date: December 22, 2000
Appellant(s): TYRRELL ET AL.

Alyssa A. Dudkowski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 20, 2003.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-7, 10-34, 37-41, 43 45-47, and 49-57 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

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6,149,934 KRZYSIK ET AL. 11-2000

6,294,186 BEERSE ET AL. 9-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Appellant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-7, 10-34, 37-41, 43, 45-47, and 49-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik et al. (6,149,934) in view of Klofta et al. (6,238,682) in view of Beerse et al. (6,294,186).

With respect to Claims 1, 2, 14, 15, 20-25, 32, 39-41, 51, and 53-57. Krzysik discloses the use of an absorbent article (20) with a topsheet, backsheet and core located there between (see Figure 1). Kyzysik discloses the use of a lotioned topsheet to where the lotion composition

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is melted applied to the topsheet then cooled (column 13, lines 64 to column 14 line 3). Krzysik discloses the use of a lotion composition on the topsheet that has a melting temperature between 10-100 degrees Celsius (column 12, lines 31-34), a low sheer viscosity between 50,000-80,000 cP, a high sheer viscosity of 150-250 cP (column 12, lines 42-60), a penetration hardness between 5-360 mm (column 12, lines 66-67) disposed on the topsheet from 1-50 gsm (column 13, lines 44-49). Krzysik however does not disclose a lotion composition with a hydrophilic solvent, a high molecular weight polyethylene glycol, a fatty acid, a fatty alcohol and a decoupling polymer. Klofta discloses a lotion composition with a 5-60% hydrophilic solvent (column 5, lines 6-8), a high molecular weight polyethylene glycol (column 10, lines 9-10), 0.1-60% skin conditioning agent such as a fatty alcohols and fatty acids (column 18, line 10 to column 19, line 24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composition of Krzysik to be the composition of Klofta, in order to provide a lotion composition that kills viruses and imparts a soft lubricious feel. (see Klofta abstract).

Krzysik and Klofta, as disclosed above, fail to disclose the use of a decoupling polymer and a sterol. Beerse discloses the use of a lotion composition that can be used on diapers (column 9, lines 12-13) that contains about 0.1-10% of a decoupling polymer such as polysaccharides or polyacrylamides (column 36, line 51 to column 37, line 46) and a skin moisturizer such as cholesterol and is present from 0.1-20% (column 10, lines 43 to column 11, line 16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modify the composition of Klofta to include the decoupling agent

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and the sterol of Beerse, in order to thicken the skin care composition to improve the moisturizing effect of the composition.

With respect to Claims 3, 26 and 45: See Klofta, column 17, lines 13-42.

With respect to Claims 4, 5, 27, 28, and 46: See Klofta, column 17, lines 23-35.

With respect to Claims 6, 29 and 47: See Klofta, column 24, lines 11-14.

With respect to Claims 7 and 34: See Klofta column 16, lines 31-42.

With respect to Claims 10, 11, 30 and 49: Klofta discloses the use of a surfactant with an HLB value of greater than 7 (column 21, lines 12-14), but fails to disclose the use of glycerol stearate, polysorbate or water dispersible metal salts. It would have been an obvious matter of design choice to have the surfactant be either stearate, polysorbate or a water dispersible metal salt, since it has not been disclosed that the use of either stearate, polysorbate or a water dispersible metal salt solves any stated problem or is for any particular purpose and it appears that the invention would work equally as well with the surfactants of Klofta.

With respect to Claims 12, 13, 31 and 50: See Klofta column 27, lines 30-37.

With respect to Claims 16, 17, 33 and 52: See Klofta column 18, line 10-12.

With respect to Claims 18, 19, 37, 38 and 53: See Klofta column 24, lines 30-40.

With respect to Claim 43: See Krzysik column 13, line 59.

(11) Response to Argument

With respect to Appellant's arguments that the examiner has failed to identify the motivation to combine the Krzysik patent with the teachings of Klofta and Beerse: the appellant's argue that the examiner does not adequately state why one of ordinary skill would select particular compounds to arrive at the composition of the claimed invention. With regards

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to modifying Krzysik with Klofta, the examiner is not picking and choosing particular compounds of Klofta, the examiner is replacing the entire composition of Krzysik with the entire composition of Klofta, which is merely replacing one whole composition with another whole composition. With regards to picking and choosing components of Beerse and adding them to the composition of Klofta (which replaces the composition of Krzysik), Klofta discloses the compositions can include additional components such as viscosity modifiers (which can be a thickening agent), and other pharmaceutical actives (column 27, lines 17-37). Beerse discloses an antibacterial skin care composition, with such components as moisturizing agents, such as a sterol, and a thickening agent such as a polysaccharide. The motivation to combine comes from the fact that Beerse discusses the benefits of both a moisturizing agent and a thickening agent (which Klofta discloses can be an option component). The preferred materials of the moisturizing agent and the thickening agents are the cholesterol, which is a sterol, and a polysaccharide, which is a decoupling polymer. Therefore the motivation to add the select components of Beerse into the composition of Klofta comes from adding a moisturizing agent and from adding a thickening agent and from the fact that Klofta recognizes the addition of other components.

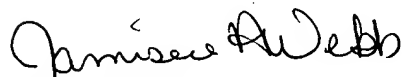
With respect to appellant's arguments that there is not a reasonable expectation of success: As stated above, there is motivation to combine the Krzysik, Klofta and Beerse references, and the examiner is not merely picking and choosing components from each one, but replacing the entire composition of Krzysik with the entire composition of Klofta, then adding the moisturizing agent, which happens to be a sterol, and the thickening agent, which happens to be a decoupling polymer, from Beerse. If all the active ingredients of the combination of Klofta

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and Beerse are the same as the claimed invention, then it would inherently have the same effect as the claimed invention, and therefore have a reasonable expectation of success.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Jamisue Webb

May 13, 2003

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